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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,530	02/24/2005	Hermes Reyes Cuadros	05019	7076

23338 7590 11/10/2008

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EXAMINER	
LIU, JONATHAN	
ART UNIT	PAPER NUMBER
3673	
MAIL DATE	DELIVERY MODE
11/10/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/525,530	REYES CUADROS, HERMES	
	Examiner	Art Unit	
	JONATHAN J. LIU	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 September 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *5,7 and 9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *5,7 and 9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 February 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

In response to remarks filed 9/12/2008

Response to Arguments

1. Applicant's arguments with respect to claims 5, 7, and 9 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 5, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karpen et al. (US 2,305,430) in view of Blecker et al. (US 3,255,469), and in further view of Freeman (US 2,975,437). Karpen et al. teach a symmetric mattress comprising a central metallic spring unit (10), having opposite faces on each of which is disposed, in sequence: a first sisal layer (12); a natural cotton layer (13); and an outer textile padded layer (18) attached to a foam rubber layer (17). Although Karpen et al. is silent to whether the foam rubber layer is perforated, such construction is well known within the art of cushions/mattresses. Nonetheless, Blecker et al. teach a multiple layer cushion comprising a perforated rubber layer (18; col. 2, lines 23-27). Karpen et al. and Blecker et al. are analogous because they are from the same field of endeavor, i.e. cushions/mattresses. It would have been obvious to modify the foam rubber layer of Karpen et al. to have perforations as taught by Blecker et al. The motivation would

have been to permit a freer flow of air through the mattress/cushion (Blecker: col. 3, lines 45-46). Therefore, it would have been obvious to modify the invention to Karpen et al. as specified in claim 1. With regards to the limitation wherein the outer textile padded layer is *sewn* to the rubber layer, such limitation is considered as a process limitation. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." [citations omitted] See MPEP 2113. Accordingly, the outer textile padded layer of Karpen et al. is attached to the foam rubber layer (e.g. by 22) and thereby meets the limitations of the claim. Alternatively, such construction (e.g. sewing adjacent layers) is well known within the art and can be evidenced by Karpen et al. (e.g. members 15 and 23 are *sewn/stitched* together). Thus, it would have been obvious to sew the outer textile padded layer to the rubber layer of Karpen et al. as an alternative expedient to attach adjacent layers together, preventing unwanted movement between them. Additionally, Karpen et al. do not teach a second sisal layer contacting the cotton layer and the rubber layer. Freeman teaches a mattress comprising two sisal pads (20, 21 or 22, 23) on either side of a metallic spring core, to provide a relatively soft feeling mattress (col. 1, lines 30-32). Karpen et al. and Freeman are analogous because they are from the same field of endeavor, i.e. cushions/mattresses. It would have been obvious to one of ordinary skill in the art to include a second sisal layer between the cotton layer (Karpen:

13) and the rubber layer (Karpen: 17), in order to provide a softer feeling mattress as well as provide additional cushioning. With respect to the location of the second sisal layer (e.g. between the rubber and cotton layer), since it has been held that rearranging parts of an invention involves only routine skill in the art [citations omitted] *and* only a finite number of combinations/permutations of the layers exist, such location would have been within an ordinary level of skill in the art. That is, a person of ordinary skill in the art has good reason to pursue the known options within his or her technical grasp, thus rendering the location of the second sisal layer obvious to one of ordinary skill in the art. Therefore, it would have been obvious to modify the invention to Karpen et al. as specified in claim 1.

With regards to claim 7, the components *necessarily* make up a ventilated unit dissipating heat, with an ergonomic fitting made up by the natural latex and the metallic spring unit in combination. It is noted that while Karpen et al. as modified does not teach wherein layer (Karpen: 17) is *natural latex* – it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a natural latex layer (with perforations – as taught by Blecker et al.), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice [citations omitted].

In regards to claim 9, Blecker et al. teach a second perforated natural latex or rubber layer (Blecker: e.g. 20). It would have been obvious to include this second layer with the invention to Karpen et al. in order to provide additional cushioning.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN J. LIU whose telephone number is (571)272-8227. The examiner can normally be reached on Monday through Friday, 8 am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patricia L Engle/
Supervisory Patent Examiner, Art Unit 3673

/J. J. L./
Examiner, Art Unit 3673